IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

CRP.No. 1509 of 2001(H)

RCA.139/2000 of DISTRICT COURT, ERNAKULAM
RCP.225/1997 of ADDL.MUNSIFF COURT (RENT CONTROL COURT).,ERNAKULAM

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REVN. PETITIONER/APPELLANT/PETITIONER:

M.R.NANNDAGOPAN, S/O. RAMAN, AGED 66,
AYYAKULATH HOUE, MAMANGALAM KARA,
PALARIVATTOM P.O.
EDAPPALLY SOUTH VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.SURESH

RESPONDENTS/RESPONDENTS/RESPONDENTS:

1. M/S. CAR CHOICE, A PARTNERSHIHIP FIRM,
DOING BUISNESS AT DOOR NO. 35/281-A,
MAMANGALAM, PALARIVATTOM P.O. KOCHI - 35.

2. R. SADASIVAN, S/O. T.A.RAMAN, SIVASREE,
JANATHA ROAD, VYTTILA, KOCHI-19.

3. P.K. HARSHAN, S/O. P.K. KARUPPAN,
POONTHODATH HOUSE, EROOR P.O.
TRIPUNITHURUA, NADAMA VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.C.K.ARAVINDAKSHA MENON
SRI.V.N.GOPINATHAN
SRI.VARGHESE PARAMBIL
SRI.A.RAJAGOPALAN
SRI.PRAKASH P.GEORGE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 2-1-2007, THE COURT ON 7-2-2007 PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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C.R.P.NO. 1509 OF 2001

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DATED THIS THE 7TH DAY OF FEBRUARY 2007

ORDER

Udayabhanu,J.

The revision petitioner is the landlord/petitioner who was non suited from both the courts below. He had sought for getting the premises evicted under Section 11(3) of the Kerala Buildings Lease & Rent Control Act, 1965 (Act 2 of 1965){for short `the Act'} for the bona fide need to start business in the sale of spare parts and fittings of motor vehicles. The petitioner is a diploma holder in automobile engineering. He was employed in the service of Government of Kerala and was retired sometime back. The premises was rented out to the respondents on 23-3-1994 on a rental of Rs.910/- per month for a period of two years and thereafter at Rs.1090/- per month and the total period of lease is to be three years. (the lease deed was not produced). It is the case of the petitioner/landlord that the particular room has got an entrance at the back side and hence

ingress and egress from the shop room to his house that is situated on the rear side of the building is possible. The petition schedule room was constructed with the above facility with the idea of starting a business for himself. It was let out to the respondents as he was having certain financial tightness at a time on account of the reconstruction of the building in which the petition schedule shop room is situated. The respondents are running a firm by name Car Choice in the premises. They had agreed to vacate the room after three years. Moreover they have spoiled the relationship in between him also, as they started conducting repair works of the vehicles etc.during the night time and the request of the petitioner to stop the same was not heeded to, resulting in disturbance to sleep to him and family. A lawyer notice was also sent in this regard. According to him, he is not having sufficient earnings and also wanted to spent his time for an income generating purpose and hence the proceedings initiated.

2. The respondents contended that the only motive of the petitioner is to let out the premises for a higher rent and also to amass a huge premium. The understanding alleged that the

premises shall be vacated after three years is stoutly denied. It is pointed out that Rs. One lakh was paid as premium and that they have spent about more than Rs. 3 lakhs in the business. It is pointed out that the rest of the seven rooms in the building also, the same condition of three years is mentioned in the lease deeds. The respondents have also brought to the notice of the court the antecedents of the petitioner in this regard that he sought eviction of one Chellappan in 1986 vide R.C.P.No.1/1986 for the same purpose, i.e.for starting an automobile workshop for the petitioner and electronics business for his son. The petitioner retired in the year 1987. Subsequent to the eviction the above shop room, the building was reconstructed and after reconstruction one room was given to Chellappan as eviction was also sought under Section 11(4)(iv) of the Act. The above tenant was again sought to be evicted in 1995 alleging bona fide need for his wife to start a telephone booth, S.T.D., photostat, milk booth etc. But after getting vacant possession the particular room was let out to one P.P.Santhoshkumar on 10-5-1996. The petitioner and his wife were employed and both of them are getting a fabulous amount by way of pension. His

children are well employed. Thus were the contentions of the tenants.

3. The Rent Control Court as well as the Appellate Authority dismissed the application of the petitioner as it was found that the petitioner has let out the shop room in the same building to one Santhoshkumar after getting vacant possession of the same in pursuance of R.C.P.No.89/1995 on a higher rental of R.1080/- and also accepting security of R.50,000/-. It was brought out in the evidence that the landlord was entertaining the desire to start a business since long, but yet after getting vacant possession of the premises occupied by Chellappan, he let out the same to Santhoshkumar and thereafter initiated the present proceedings. It was also found that the version of PW1, the petitioner that the above room is only a stair case room and the area of the same is only 80 sq.ft.and the same is not suitable for the proposed business is incorrect. The admission brought out in the cross examination of PW1 itself belied the above contention as PW1 admitted that the above room has got an extent of 150 sq.ft. This was in answer to the suggestion that the above room has got an area of 165 sq.ft. But PW1 asserted that the extent is

only 150 sq.ft. Further more, the petitioner did not make any endeavour to adduce any objective evidence in the matter, by taking out a commission etc. although the above contention was raised by the respondent in the counter statement filed in the R.C.P.itself. We find that the above aspect that appears very much prominent in evidence and the above stands unexplained at the instance of the petitioner. The entire case set up by the landlord stands virtually demolished on account of the above fact brought out. Hence, we find that the petitioner has failed to establish the bona fides of the need set up and we find that the decision of the courts below in this regard cannot be said to be improper, irregular or illegal. We find no reason to allow the revision petition.

4. All the same it has to be noted that the rent has remained static for the last more than 10 years. We find the rent is liable to be enhanced. The rent would stand raised tentatively to Rs.2500/- per month from today onwards until the petitioner/landlord initiates appropriate proceedings for the enhancement of rent. The respondents/tenants shall be liable to pay the rent at the rate of Rs.2500/- per month to the petitioner

from today onwards until the same is refixed in the appropriate proceedings. The revision petition is disposed of accordingly.

Sd/-
K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

ks. TRUE COPY

P.S.TO JUDGE

K.A.ABDDUL GAFOOR
&
K.R.UDAYABHANU, JJ

C.R.P.NO.1509 OF 2001

ORDER

DATE: